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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|--|-------------|----------------------|---------------------------------|-----------------------------|
| 10/790,562   | 03/01/2004  | Abraham Bout         | 2578-4038.3US                   | 9903                        |
| 24247  | 7590        | 03/21/2008           |                                 |                             |
| TRASK BRITT<br>P.O. BOX 2550<br>SALT LAKE CITY, UT 84110 |             |                      | EXAMINER<br>JOLKE, MICHELE K    |                             |
|  |             |                      | ART UNIT<br>1636                | PAPER NUMBER                |
|  |             |                      | NOTIFICATION DATE<br>03/21/2008 | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

### Office Action Summary

**Application No.**

10/790,562

**Applicant(s)**

BOUT ET AL.

**Examiner**

MICHELE K. JOIKE

**Art Unit**

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 7-21 and 25-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1, 7-21 and 25-56 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of a reply to the previous Office Action, filed January 22, 2008. Claims 2-6 and 22-24 are canceled. Claims 1 and 9 were amended.

Claims 1, 7-21 and 25-56 are pending and under consideration in the instant application. Any rejection of record in the previous Office Action, mailed January 11, 2008 that is not addressed in this action has been withdrawn.

This is a Non-Final office action.

### ***Double Patenting***

Claims 1, 7-10 and 17-18 are directed to an invention not patentably distinct from claims 1-7 and 9-11 of commonly assigned 10/644,256, for reasons of record.

Claims 1, 7-10 and 17-18 are directed to an invention not patentably distinct from claims 14-15 and 18-19 of commonly assigned 11/271,090, for reasons of record.

Claims 1, 7-9, 11-13, 17-18, 32-34, 38-39, 42-44, 49-51 and 55 are directed to an invention not patentably distinct from claims 25, 26, 30, 31, 35, 36, 50-55, 59-63 and 65-68 of commonly assigned 10/499,298, for reasons of record.

Claims 1, 7-10, 17-18 and 30 are directed to an invention not patentably distinct from claims 28-29, 31-40 and 43-50 of commonly assigned 11/039,767, for reasons of record.

Claims 1, 7-10 and 17-18 are directed to an invention not patentably distinct from claims 37-39 of commonly assigned 10/497,832, for reasons of record.

Claims 1, 7-10 and 17-18 are directed to an invention not patentably distinct from claims 42-49 of commonly assigned 11/026,518, for reasons of record.

Claims 1, 7-9, 11-13, 17-18, 32-34 and 38-39 are directed to an invention not patentably distinct from claims 28-50 and 89-90 of commonly assigned 11/593,279, for reasons of record.

Claims 1, 7-9, 11-13, 15-18, 32-34 and 38-39 are directed to an invention not patentably distinct from claims 28-50 and 89-90 of commonly assigned 11/593,280, for reasons of record.

Claims 21, 25-26, 42-44 and 49-51 are directed to an invention not patentably distinct from claims 1-20 of commonly assigned 11/039,767, for reasons of record.

Claims 1, 7-9, 17-18, 20-21, 25-26, 38-39, 41, and 55-56 are directed to an invention not patentably distinct from claims 1-23 of commonly assigned 11/280,757, for reasons of record.

Claims 1, 7-9, 15, 21, 25-26, 36, 46 and 53 are directed to an invention not patentably distinct from claims 1-22, 29 and 30 of commonly assigned 11/110,517, for reasons of record.

Claims 21, 25-26, 29, 46-47, 53-54 and 56 are directed to an invention not patentably distinct from claims 1-36 of commonly assigned 11/271,368, for reasons of record.

Claims 1, 7-9, 15-16 and 36-37 are directed to an invention not patentably distinct from claims 31-34 and 37 of commonly assigned 11/450,038, for reasons of record.

Claims 21, 25-26, 29, 46-47, 53-54 and 56 are directed to an invention not patentably distinct from claims 1-14 and 18 of commonly assigned 11/256,352, for reasons of record.

Note: It is noted that Applicants have filed the appropriate terminal disclaimers. However, there is still the issue of inventorship/ownership at the time of invention, as stated below.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned applications, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE K. JOIKE whose telephone number is (571)272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele K Joike, Ph.D.  
Examiner  
Art Unit 1636

/David Guzo/  
Primary Examiner  
Art Unit 1636